Supreme Court, U.S.
FILED
AUG 11 1994
OFFICE OF THE CLERK

NO. 94-55

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

DINO CINEL,
Petitioner,

versus

HARRY CONNICK, RAY BIGELOW, GEORGE TOLAR, GARY RAYMOND, DAVID PADDISON, DARRYL TSCHIRN, RICHARD ANGELICO, PULITZER BROADCASTING COMPANY, GERALDO RIVERA, TRIBUNE ENTERTAINMENT COMPANY,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Darryl J. Tschirn submits that the only appropriate issues presented for review are whether:

1) The Court of Appeals properly determined that the Petitioner's Complaint failed to state a claim under either the notice pleading standard of Rule 8(a) (2) of the Federal Rules of Civil Procedure as enunciated by this Court in *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit,* __ U.S. __, 113 Sup. Ct. 1160, 122 L.Ed. 2d 517 (1993) or the heightened pleading requirement set forth in *Elliott v. Perez*, 751 F.2d 1472, 1479 (5th Cir. 1985).

2) The Court of Appeals properly determined that Petitioner's Complaint failed to set forth claims under 42 U.S.C. §1983 and under Louisiana law since it found that the allegation of release of the sexual materials and names and addresses of the participants in the video did not implicate any constitutional privacy interests; that Petitioner was not denied procedural due process rights by not receiving notification of a subpoena duces tecum; that Petitioner did not have any claim under the Due Process Clause for damage to his reputation; that Petitioner failed to alleged facts to suggest a conspiracy agreement between state actors and private actors to publish material released pursuant to the subpoena; and that there was no tort invasion of privacy since the matter was of public concern.

PARTIES TO THE PROCEEDING

Because of Petitioner's failure to comply with Rule 24.1(b), Respondent certifies the following list of all parties to the proceeding whose judgment is sought to be reviewed.

Represented by Raymond J. Salassi, Jr. and
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Michael P. Mentz of
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and

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Dino Cinel

Richard Angelico, WDSU Television, Inc.
and Pulitzer Broadcasting Co.
Represented by Stephen B. Lemann,
H. Price Mounger, III and Gerald A. Bos of
Monroe & Lemann

Harry F. Connick and Raymond Bigelow
Represented by William F. Wessel and
Victoria L. Bartels of
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David R. Paddison
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Galloway, Johnson, Tompkins
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and

Jacques Francois Bezou of
Derussy, Bezou and Matthews

Geraldo Rivera and Tribune Entertainment
Company
Represented by Ms. Mary Ellen Roy,
Luther T. Munford and Ms. Debra J. Hale of
Phelps Dunbar

and

Amelia Williams Koch and
Rutledge C. Clement, Jr. of
Locke, Purnell, Rain, Harrell

George Tolar -
Represented by Michael G. Riehlman

Gary Raymond
Represented by J. Kevin McNary

and

Harry C. Graham, III

Christopher Fontaine, plaintiff in the civil matter entitled "Christopher V. Fontaine v. The Roman Catholic Church of the Archdiocese of New Orleans, et al, No. 89-25790, Div. F"

Ronald Tichenor, plaintiff in civil matter entitled "Ronald Tichenor v. The Roman Catholic Church of the Archdiocese of New Orleans, et al, No. 91-09416, Div. I"

The Roman Catholic Church for the Archdiocese of New Orleans, defendant in the civil matters *Fontaine* and *Tichenor supra.*

St. Rita's Church of New Orleans, party in related civil matters *Fontaine* and *Tichenor supra.*

United States Fidelity & Guaranty Company, party in related civil matters *Fontaine* and *Tichenor supra.*

Fireman's Fund Insurance Company, party in related civil matters *Fontaine* and *Tichenor supra.*

Mission National Insurance Company, part in related civil matters *Fontaine* and *Tichenor supra.*

International Insurance Company, party in related civil matters *Fontaine* and *Tichenor supra.*

International Surplus Lines Insurance Company, party in related civil matters *Fontaine* and *Tichenor supra.*

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CITATIONS TO OPINIONS BELOW

Petitioner seeks review of the judgment and opinion of the United States Court of Appeals for the Fifth Circuit reported at 15 F.3d 1338. (Petitioner's Appendix C, pp. A-41 - A-54.) The Court of Appeals denied Petitioner's Petition for Rehearing on April 6, 1994. (Respondent's Appendix A, p. A-1.) The Court of Appeals affirmed the judgment and reasons for judgment of the District Court which is unreported. (Petitioner's Appendix B, pp. A-21 - A-40.)

STATEMENT OF JURISDICTION

In accordance with Rule 24.1(e), the Respondent states that jurisdiction for the Petition for Writ of Certiorari of Petitioner is based upon 28 U.S.C. §1254(1) and 28 U.S.C. §2101(c) which grants jurisdiction to the Supreme Court for Petitions of Writ of Certiorari of any party to a civil case after rendition of a judgment or decree by a Court of Appeals.

STATEMENT OF STATUTES

In accordance with Rule 24.1(f), the Respondent states that the following statutes are at issue in this case:

> Rule 8(a) (2) of the Federal Rules of Civil Procedure.
>
> Rule 8. General Rules of Pleading
>
> (a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, . . ., shall contain . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, . . .

Rule 12(b) (6) of the Federal Rules of Civil Procedure.

Rule 12. Defenses and Objections--When and How Presented--By Pleading or Motion--Motion for Judgment on the Pleadings

Rule 12(b) How Presented.

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted, . . .

42 U.S.C. §1983

§1983. Civil action for deprivation of rights

Every person, who under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF CASE

Facts as alleged in Complaint

Respondent takes issue with Petitioner's statement of the facts in certain significant areas. Since this is a Petition for Writ of Certiorari involving the dismissal of a Complaint under Federal Rule of Civil Procedure 12(b) (6), the Petitioner's Complaint becomes the source of the facts for disposition of the motion and the non-conclusory factual allegations in the Complaint are assumed to be true for purposes of determining the motion. Respondent thus makes no attempt here to challenge the veracity of the allegations of Petitioner in his Complaint.

Although consideration of this Petition for Writ of Certiorari is not dependent on the underlying facts in the lawsuit, the factual allegations as set forth by the Petitioner in his Complaint are relevant to disposition of this Petition. Since the Petitioner has both failed to provide this Court with a concise statement of the factual allegations in his Complaint and has chosen to add new allegations not contained in Complaint, Respondent submits herewith an accurate summary of the allegations in Petitioner's Complaint.

i. Allegations against all Defendants

Petitioner's Complaint alleges that the Defendants are liable to him under 42 U.S.C. §1983 for engaging in a conspiracy to deprive him of his constitutional rights to privacy, due process of law and a fair trial under the U. S. and Louisiana State Constitutions. (Petitioner's Appendix A.) Additionally, Petitioner asserts state law claims against the Defendants for tortious interference with his right to privacy and failure to supervise those with custody of the sexually explicit materials.

The background and overt acts sections of Petitioner's Complaint contain the factual basis and specifications of wrongful conduct against the Defendants. (Petitioner's Appendix A, pp. A-4 - A-8, A-18,paras. 7-43B.) The Petitioner alleges that he was a Roman Catholic priest and lived at St. Rita's Rectory in New Orleans from 1979 through 1988 while serving as a professor in the History Department of Tulane University. On December 20, 1988, the Petitioner was driven to the airport in his car by an associate, Professor Linda Pollock of Tulane University. He was departing the United States for a several-week visit to Italy. After leaving the airport, Pollock went shopping and accidentally locked the car keys inside Cinel's car. Pollock called the Rectory of St. Rita's Church and asked the secretary if there was a second set of keys to Cinel's car. Father James Tarantino, the Pastor of St. Rita's Church, first looked in a cigar box in the safe of the Rectory and then went into the Petitioner's study to check the desk top and drawers. There, Father Tarantino came upon a magazine that advertised telephone sex which was a catalogue for pornographic videos. Additionally, he saw other sexual catalogues and manilla envelopes containing photographs and negatives of nude males. Father Tarantino then left the Petitioner's suite of rooms but returned later that night to investigate further. In the closets, Father Tarantino found commercially produced homosexual magazines featuring nude males and home-made pornographic videos depicting the Petitioner engaged in homosexual activity.

The next morning, Father Tarantino called Archbishop Philip Hannan's office to report what he had found. Archbishop Hannan contacted the Petitioner in Italy at which time the Petitioner resigned from the priesthood. Father Tarantino boxed and removed the sexual materials and delivered them to the Archdiocese office. In all, approximately four boxes of materials, comprised of photographs, magazines and home-made videos, were marshaled by Father Tarantino.

When the Petitioner returned from Italy in mid-January, 1989, he retained counsel. The Petitioner claims that his counsel attempted unsuccessfully to recover the materials from the Church's attorneys. Instead, the attorneys for the Archdiocese gave the materials to the Orleans Parish District Attorney's Office some three months later, near the end of March, 1989.

At this point in his Complaint, the Petitioner proceeds to list the overt acts which he contends support of his claims. (Petitioner's Appendix A, pp. A-5 - A-8, A-18, paras. 8-43B.) The Petitioner contends that in May, 1989, the District Attorney's Office agreed not to criminally prosecute him for possession of the materials or for any activity related thereto, if the Petitioner could prove that the two principal participants in the home-made videos were consenting adults under Louisiana law. As a result, the Petitioner identified the two male participants in the videos. George Tolar, an investigator for the District Attorney's Office, interviewed the two male participants, Christopher Fontaine and Ronald Tichenor, and on September 12, 1989, allegedly advised counsel for Petitioner that no charges would be brought against the Petitioner for either the commercial child pornography or the home-made video taped material. Accordingly, all charges against Petitioner were refused by the District Attorney's Office as of September, 1989.

The Petitioner next alleges that sometime after September, 1989, George Tolar gave the names and addresses of Fontaine and Tichenor to Gary Raymond, alleged to be a private investigator. (Petitioner's Appendix A, pp. A-5 - A-6, para. 16.) The Petitioner claims that Mr. Raymond then approached Fontaine and solicited him as a client for attorney, David Paddison. On November 30, 1989, David Paddison and Darryl Tschirn filed a lawsuit on behalf of Fontaine for damages against the Petitioner and the Catholic Church in the Civil District Court for the Parish of Orleans and requested that the Court seal the Complaint. (Petitioner's Appendix A, p. A-6, para. 18.) Thereafter, a subpoena duces tecum was issued from the Clerk of the Civil

District Court on February 21, 1990, in the Fontaine lawsuit seeking production of the materials in the possession of the District Attorney's Office.[1] (Petitioner's Appendix A, p. A-6, para. 21.) A consent judgment was issued by the Civil District Court on March 9, 1990, naming Mr. Tolar as the custodian and giving Mr. Raymond the right to copy the materials for use by the parties in the Fontaine lawsuit. The District Attorney's Office then requested an alteration of the consent judgment and a new consent judgment was issued on March 12, 1990, substituting Messrs. Paddison and Tschirn as custodians in place of Mr. Tolar. (Petitioner's Appendix A, pp. A-6 - A-7, para. 26.) Thereafter, the materials were released to Messrs. Paddison, Tschirn and Raymond in conformity with the State Court consent judgment. Although he was a party to the Fontaine lawsuit, Cinel does not allege that he or his counsel undertook any effort to restrict or modify the consent judgement.

The next allegation of any consequence refers to an incident which occurred more than a year later on March 14, 1991, when it was alleged that Gary Raymond leaked the materials to newsman Richard Angelico of WDSU-TV. (Petitioner's Appendix A, p. A-7, para. 30.) No publication of any material occurred until May 1991. (Petitioner's Appendix p. A-8, paras. 40-41.) Additionally, it is alleged that in February 1992, Gary Raymond leaked the material to Geraldo Rivera and Tribune Entertainment Company. (Petitioner's Appendix A, p. A-18, para. 43A.) Broadcast of some of the material by Tribune occurred on March 3, 1992, approximately two years after the

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[1] Significantly, the plaintiff does not allege who caused this subpoena to be issued since the subpoena was not requested by any of the defendants. No amendment to the complaint could cure this defect because the subpoena was requested by the attorneys for the insurers of the Catholic Church, none of whom are parties to the instant litigation.

Consent Judgment. (Petitioner's Appendix A, p. A-18, para. 43B.)

ii. Allegations against Mr. Tschirn

The Complaint makes many allegations about many persons. However, very few allegations are made regarding Respondent, Mr. Tschirn, to support the professor's tall thesis that Mr. Tschirn conspired to deprive him of his constitutional rights.

Significantly, the Petition for Writ of Certiorari does not even mention Respondent Tschirn's name. Moreover, Petitioner's Complaint does not allege any knowledge or participation of Respondent Tschirn in the disclosure of anything to anybody. The Complaint makes no factual allegations that Respondent Tschirn agreed in advance with anyone to violate the Federal and State constitutional rights of the Petitioner. Thus, there is no alleged basis to hold Respondent Tschirn liable for any violation of constitutional rights or invasion of privacy.

iii Petitioner's highlighted allegations are not supported by the record

In his Writ Petition, Petitioner highlights three alleged events that he claims best illustrate the activities of Defendant, Tolar, and others. Not only are these allegations not contained in Petitioner's Complaint but they are inconsistent and conflict with other allegations in Petitioner's Complaint.

Under Part (a) of Petitioner's Statement of Facts at p. 5 of the Petition for Writ of Certiorari, Petitioner claims that Tolar offered a videotape to Raymond "so that Raymond would use the evidence in the tape to make the necessary arrangement to start a civil litigation, with publication of evidence through the media, if necessary." According to the Petitioner's own allegations in paragraph 18 of his Complaint, the civil suit had already been

filed at the time Raymond allegedly obtained the videotapes. (Petitioner's Appendix A, p. A-6, para. 18.) Additionally, Petitioner's allegations under paragraphs 21, 25 and 26 of his Complaint allege that the materials were obtained by Raymond and others as a result of a subpoena duces tecum issued in the already pending civil lawsuits against Petitioner. (Petitioner's Appendix A, pp. A-6 - A-7, para. 21, 25 and 26.) Finally, Petitioner makes no allegation in his Complaint, as he attempts to do in his Petition for Writ of Certiorari, that Tolar discussed the "publication of evidence through the media, if necessary" with Raymond.

Under Section (b) of page 5 of the Petition for Writ of Certiorari, Petitioner makes the factual allegation that Tolar voluntarily offered the entire criminal investigation file to two Plaintiff's attorneys so that they would have the "data they needed to start their civil litigation." Nowhere in Petitioner's Complaint is there such an allegation regarding the offering by Tolar of the entire criminal investigation file to Petitioner's attorneys. To the contrary and as is stated above, the Petitioner's attorneys obtained copies of the videotapes and other pornographic material by means of a lawfully issued subpoena duces tecum and consent judgment issued by the Civil District Court for the Parish of Orleans. The only allegation that Petitioner makes regarding information from the criminal investigation file is in paragraph 16 of his Complaint wherein he alleges that Tolar gave the names and addresses of the victims of Petitioner to Raymond "so that they could be solicited as clients for Paddison in a civil prosecution of Cinel." (Petitioner's Appendix A, pp. A-5 - A-6, para. 16.)

Under Section (c) on page 5 of the Petition for Writ of Certiorari, Petitioner again conveniently omits the fact that the videotape and other pornographic material found in Petitioner's room were obtained by a validly issued subpoena and consent judgment in the civil case. The Court of Appeals noted that the

subpoena duces tecum had been issued at the request of the Catholic Church, an entity which is neither named as a party-defendant to this case nor alleged by Petitioner to be a co-conspirator with the Defendants.

SUMMARY OF ARGUMENT

The Court of Appeals tested the sufficiency of Petitioner's Complaint under both Rule 8(a) (2) of the Federal Rules of Civil Procedure and under the heightened pleading requirement set forth in *Elliott v. Perez*, 751 F.2d 1442, 1474 (5th Cir. 1985) and found that Petitioner's Complaint failed to set forth a claim under either standard. Thus, Petitioner has no basis to claim that the Court of Appeals failed to test the sufficiency of his Complaint under Rule 8(a) (2) since the Court of Appeals found that the Complaint was deficient under either standard.

The Court of Appeals properly determined that Petitioner's Complaint failed to set forth claims under 42 U.S.C. §1983 and under Louisiana law since it found that the sexual material which had been released were properly obtained by subpoena and were matters of public concern. Additionally, the Court of Appeals was proper in finding that the Petitioner's Complaint failed to allege any facts to support a conspiracy between State actors and private actors to publish the sexual material released pursuant to the subpoena.

ARGUMENT

There is no reason to grant a writ in this isolated case

This matter is not appropriate for review by this Court. There is no dispute among the Circuits. The Court of Appeals did not so far depart from the accepted and usual course of judicial proceedings, or sanction such a departure by the lower court, as to call for an exercise of this Court's power of supervision. Most importantly, the Court of Appeals did not decide a Federal

question in a way that conflicts with applicable decisions of this Court.

Petitioner cannot point to a major legal issue raised by this proceeding having any impact outside of this single case. Petitioner has not cited any cases which represent a conflict with any decision of the Court of Appeals and the decision by the Court of Appeals is consistent with the decisions of this Court. Accordingly, this Court should not consider this matter further at this time.

The considerations governing review of a Writ of Certiorari are set forth in the Rules of the Supreme Court of the United States, Rule 10. The considerations set forth in Rule 10 do not justify the granting of a Writ of Certiorari in this case. This matter has been thoroughly reviewed by the Federal District Court and by the panel of the United States Court of Appeals for the Fifth Circuit. Unanimously and consistently, the Judges have found the decision proper.

Petitioner has not pointed to any, nor can he point to any, special or important trend or development in the law implicated in this decision. There is simply no important question of Federal law which should be settled by this Court at this time.

Supreme Court Rule 10 is a restatement of prior Supreme Court Rule 19. This Court has explained that the importance of restricting review to cases involving "special and important reasons" for granting a Writ of Certiorari. *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, at 73-74, 75 Sup. Ct. 614, at 616 (1955). No special or important reasons exist for the granting of a Writ of Certiorari in this case.

The Court of Appeals properly construed Petitioner's Complaint under the notice pleading standard of Rule 8(a)(2)

The only question raised by Petitioner is whether the Court of Appeal properly applied the rule of law set forth by this

Court in *Leatherman v. Tarrant County Narcotic Intelligence and Coordination Unit*, __ U.S. __, 113 Sup. Ct. 1160, 122 L.Ed. 2d 517 (1993) in establishing the sufficiency of the allegations of Petitioner's Complaint under a Rule 12(b) (6) Motion to Dismiss. The position and response by Respondent is direct. Simply put, the Court of Appeals did not ignore the dictate of this Court in the *Leatherman* case.

The Court of Appeals below acknowledged that, in *Leatherman*, this Court overruled precedent of the Court of Appeals with regard to the standard to be applied in construing a 42 U.S.C. §1983 under a Rule 12(b) (6) motion. *Cinel v. Connick*, 15 F.3d, 1338, 1342 (5th Cir. 1994). The Court of Appeals found that the District Court had applied the heightened pleading requirement for §1983 cases which had been established by the Court of Appeals in *Elliott v. Perez*, 751 F.2d 1472, 1479 (5th Cir. 1985) when evaluating the sufficiency of Petitioner's Complaint. When the District Court rendered its Order and Reasons, the heightened pleading requirement of *Elliott v. Perez* was appropriate. While this case was on appeal to the Court of Appeals, this Court handed down *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, supra.* which overruled the application of the heightened pleading requirement in certain cases.

It is obvious that the Court of Appeals was aware that this Court left open the question of the applicability of the heightened pleading requirement in cases involving government officials. Rather than decide whether the heightened pleading requirement should apply to such officials, as a matter of law, the Court of Appeals held that:

> we need not resolve the precise scope of *Leatherman* for, following our detailed de novo review of the Complaint, we agree that under either standard the pleadings are deficient to resist Appellees

> motion under Rule 12(b) (6). There is no relief to which Appellant is entitled based upon the allegations he has made.

Cinel v. Connick, supra, at p. 1342.

The Court of Appeals did not need to reach the question of the applicability of the heightened pleading requirement in cases involving government officials. The Court of Appeals found that Petitioner's Complaint did not pass the muster of either the notice pleading standard under Rule 8(a) (2) or the heightened pleading requirement. Thus, this case does not rise to the standard set by this Court in Rule 28 for the granting of a Writ of Certiorari.

The Court of Appeals properly found that Petitioner's Complaint failed to state a cause of action under any theory

The Court of Appeals has properly determined that Petitioner's Complaint failed to set forth claims under 42 U.S.C. §1983 and under Louisiana law. The Petitioner has made the acquisition and publication of his sexual material the focal point of his constitutional and state law claims in this case. For the federal and state constitutional claims, there must be state action. However, there is no allegation in Petitioner's Complaint which demonstrates a relationship between the legitimate production of the material by the District Attorney pursuant to a subpoena and the publication obtained more than a year later and there is no allegation that an agreement was made between the District Attorney and the private actors to publish the material. The materials were legitimately obtained through the proper legal channels by way of a subpoena duces tecum and a consent judgment issued by the Civil District Court for the Parish of

Orleans and through the operation of the Louisiana Public Records Act, La. R.S. 44:1, *et seq*. In addition, the Petitioner had no privacy interest since the materials were evidence of criminal activity to the extent that they depicted homosexual sodomy and were matters of legitimate public interest since they contributed to an understanding of how the District Attorney and the Catholic Church dealt with this aberrant priest.

Accordingly, the Court of Appeals properly found that the allegation concerning the release of the sexual material and names and addresses of the participants in the video did not implicate any constitutional privacy interests. The Court of Appeals likewise properly determined that the Petitioner was not denied procedural due process rights by not receiving verification of the subpoena duces tecum and that the Petitioner did not have any claim under the due process clause for damage to his reputation.

Finally, the Court of Appeals properly determined that Petitioner failed to allege facts to suggest an agreement for conspiracy between state actors and private actors to publish material pursuant to the subpoena. There could be no constitutional or tort invasion of privacy in this case since the matter was of public concern.

CONCLUSION

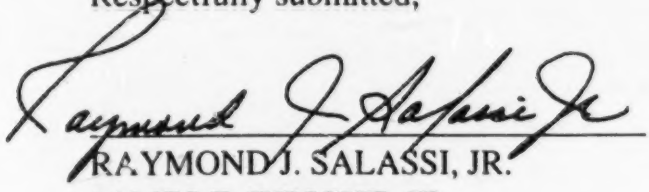
Contrary to Petitioner's contentions, the Court of Appeals properly applied Rule 8(a) (2) to construe the insufficiency of Petitioner's Complaint. In addition to applying the standards of notice of pleading under Rule 8(a)(2), the Court also found the Complaint deficient under the heightened pleading requirements. Thus, Petitioner has no complaint that the Court of Appeals failed to properly weigh his allegations.

The Court of Appeals was correct in holding that Petitioner had no due process or privacy claims since the materials were properly obtained and the matter was of public concern.

More importantly, in review of Petitioner's request for Writ of Certiorari, Petitioner cited no important legal issues on which Courts are in conflict, and suggested no important policy decisions upon which this Court should pass judgment.

Respondent, Darryl J. Tschirn, respectfully submits that the Petition for Writ of Certiorari of Dino Cinel should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the above and foregoing have been forwarded to all counsel of record by depositing same in the U.S. mail, postage prepaid and properly addressed this 11th day of August, 1994.

Raymond J. Salassi Jr

RAYMOND J. SALASSI, JR.

APPENDICES

A. Court of Appeals' denial of Dino Cinel's Petition for Rehearing A-1

APPENDIX A

U.S. COURT OF APPEALS
FILED
APRIL 6, 1994
CHARLES R. FULBRUGE III
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 92-3781

DINO CINEL,

Plaintiff-Appellant,

versus

HARRY F. CONNICK, Individually and as District Attorney for the Parish of Orleans, State of Louisiana, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

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ON PETITION FOR REHARING
(April 6, 1994)

Before DUHÉ and EMILIO M. GARZA, Circuit Judges and STAGG*, District Judge.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

[s] John M. Duhé, Jr.
United States Circuit Judge

* District Judge of the Western District of Louisiana, sitting by designation.

REHG-4

CLERK'S NOTE:
SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE.